

**September 08, 2005: Advice on House Bill 411, Concerning Law Enforcement Officers**

Secretary Jan Goodwin  
Secretary of Taxation and Revenue Department  
1100 S. St. Francis Dr.  
Santa Fe, NM 87504-0630

**RE: Request for Advice on House Bill 411, Concerning Law Enforcement Officers**

Dear Secretary Goodwin:

You requested our advice on Section 6 of House Bill 411, passed in the 2005 legislative session, which creates the Tax Fraud Investigations Division in the Taxation and Revenue Department (“Department”). In particular, you inquired as to “the legal steps and procedures” the Department should follow in “becoming a law enforcement agency” and in “employing New Mexico Certified Law Enforcement Officers.” Pursuant to NMSA 1978, § 9-11-11 (1977), our advice is as follows:

Section 6, codified at NMSA 1978, § 9-11-14 (2005), authorizes you to “employ police officers as commissioned tax fraud enforcement officers as needed in the tax fraud investigations division. . . .” § 14(A). Further, it directs that such officers shall be properly certified, § 14(B), that you may require specialized training for them, § 14(C), and that you shall require continuing in-service training for them as required by the New Mexico law enforcement academy, § 14(D).

In regard to the first part of your question, § 9-11-14 makes no reference to becoming a law enforcement agency per se. Thus, we assume that your question concerns whether additional authority, beyond that contained in the legislation, is required in order for you to implement these law enforcement functions. There is no additional authority required of which we are aware. The provision in question appears to us to grant you, as Secretary, all the authority that is needed.

The same can be said in regard to employment of law enforcement officers – the subject of the second part of your question. The legislation appears to grant all necessary authority to implement this portion of the provision; no additional authority is required for you to hire law enforcement officers for this specified assignment.

It goes without saying that you may wish to adopt regulations that provide further specificity about the administration of these law enforcement functions. As you know, the promulgation of regulations, generally, is within your authority, pursuant to NMSA 1978, § 9-11-6.2 (“The secretary is empowered . . . to issue and file as required by law all regulations . . . necessary to implement and enforce any provision of any law the administration and enforcement of which the department, the secretary, any division of the department or any director of any division of the department is charged, including all

rules and regulations necessary by reason of any alteration of any such law.”). In our view, your authority to issue regulations specifically intended to implement § 9-11-14 is implicit in that section and in § 9-11-6.2. As always, of course, such regulations must faithfully implement the intent of the statute. See e.g., Public Service Co. of New Mexico v. New Mexico Environmental Imp. Bd., 89 N.M. 223, 227, 549 P.2d 638, 642 (Ct.App. 1976) (“The authority granted to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent or policy.”).

We hope this response is helpful. If we may be of further assistance, please let us know. You requested a formal Attorney General’s Opinion on the matter discussed above. Such an opinion would be a public document available to the general public. Although we are providing our legal advice in the form of a letter instead of an Attorney General Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

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cc: Stuart M. Bluestone, Chief Deputy Attorney General